

PUBLIC CHAPTER NO. 918

SENATE BILL NO. 1183

By Black, Haynes, Johnson, Ketron, Henry, Tracy

Substituted for: House Bill No. 1591

**By Bone, Lynn, Hood, Sargent, Maggart, Pinion, Overbey, Watson,
Curt Cobb, McDonald**

AN ACT to amend Tennessee Code Annotated, Section 29-20-107, relative to extending governmental tort liability.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 29-20-107, is amended by adding the following as a new subsection thereto:

(g)(1) Notwithstanding any provision of this chapter to the contrary, non-governmental independent contractors or other persons or entities which contract with or enter into any agreements with the regional transportation authority, as defined and created in Title 64, Chapter 8, for the provision of commuter rail transit services, facilities, or functions upon a rail line or rail line right-of-way owned and maintained by a governmental entity shall be granted limited tort exposure under this chapter. This grant of limited tort exposure shall be provided only when such non-governmental independent contractors or other persons or entities are providing by contract or agreement the rail transit services, facilities, or functions that Title 64, Chapter 8 authorizes the regional transportation authority to perform. In performing or providing such rail transit services, facilities, or functions, the non-governmental independent contractors or other persons or entities are deemed to be the functional equivalent of the regional transportation authority. They are performing or providing these rail transit services, facilities, or functions in the stead of the regional transportation authority and by such are fulfilling a public purpose which is authorized to be performed by the regional transportation authority. The regional transportation authority shall enter into such contracts or agreements because it has been determined by the board of the regional transportation authority to be more cost effective to contract or enter into an agreement for such rail transit services, facilities, or functions. When the regional transportation authority's independent contractor or other person or entity that provides these rail transit services, facilities, or functions is deemed to be the functional equivalent of the regional transportation authority as provided for in this act, then the

regional transportation authority's contracting party or party to the agreement shall have limited tort exposure as long as the regional transportation authority's contracting party or party to the agreement was performing rail transit services, facilities or functions within the scope of work and during the normal course of work of the contract or agreement when the accident occurred. The regional transportation authority's contracting party or party to the agreement will not be afforded any limits to its tort exposure for gross negligence in the performance of the contract or agreement. From July 1, 2008, until June 30, 2013, for any rail transit accident, occurrence, or act the limits of tort exposure for the regional transportation authority's contracting party or party to the agreement shall be two million dollars (\$2,000,000) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act and thirty million dollars (\$30,000,000) for bodily injury or death of all persons in any one (1) accident, occurrence, or act arising or which occurred during that time frame. From July 1, 2013 until June 30, 2018, for any rail transit accident, occurrence or act the limits of tort exposure for the regional transportation authority's contracting party or party to the agreement shall be three million dollars (\$3,000,000) for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act and fifty million dollars (\$50,000,000) for bodily injury or death of all persons in any one (1) accident, occurrence or act arising or which occurred during that time frame. No tort liability limits shall be granted to the non-governmental contractor or other persons or entities which contract with or enter into any agreement with the regional transportation authority for injury to or destruction of property in any accident, occurrence, or act. The regional transportation authority shall maintain or cause to be maintained a self insurance retention fund in a minimum amount of one million dollars (\$1,000,000) up to an amount not to exceed two million dollars (\$2,000,000) which shall be utilized as a first fund source for any payment of a tort claim arising from any rail transit accident, occurrence or act which results in bodily injury or death to one (1) or more persons.

(2) The limits of liability prescribed under this subsection shall not apply to any for-profit owners of rail lines or rail line rights-of-way. As a matter of public policy, the general assembly declares and deems the operation of the regional transportation authority's commuter rail train to be a public purpose, a public and governmental function and a matter of public necessity. Any for-profit owners of rail lines or rail line rights-of-way shall not deny access to, trackage rights on, or use of rail lines or rail line rights-of-way for the operation of a regional transportation authority commuter rail operation based upon any criteria attributable to tort liability, nor shall such for-profit owners of rail lines or rail line rights-of-way subject or require the regional transportation authority to provide any tort liability protection, insurance or

coverage as part of any access to, tracking rights on, or use of rail lines owned by such a for-profit.

(3) Unless amended or extended the provisions of this subsection shall expire July 1, 2018.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: April 24, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 15th day of May 2008



PHIL BREDESEN, GOVERNOR